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7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF ARIZONA

9 \_\_\_\_\_  
10 Eddie John David, Jr.:

) No.

11 )  
12 )  
12 Plaintiff,

) COMPLAINT

13 v.

14 Portfolio Recovery Associates, LLC,

15 )  
16 Defendant.

) (Jury Trial Demanded)  
17 )  
17 \_\_\_\_\_

18 Plaintiff alleges as follows:

19 I. Preliminary Statement

20 1. Plaintiff brings this action for damages based upon Defendant's  
21 violations of the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692  
22 et seq. (hereinafter "FDCPA"). In the course of attempting to collect a  
23 debt allegedly owed by Plaintiff, Defendant engaged in deceptive,  
24 unfair and abusive debt collection practices in violation of the FDCPA.  
25 Plaintiff seeks to recover actual damages and statutory damages,

1 together with reasonable attorney's fees and costs expended herein.

2 II. Statutory Structure of FDCPA

- 3 2. Congress passed the FDCPA to eliminate abusive debt collection  
4 practices by debt collectors, to insure that those debt collectors who  
5 refrain from using abusive debt collection practices are not  
6 competitively disadvantaged, and to promote consistent state action to  
7 protect consumers against debt collection abuses. FDCPA § 1692.
- 8 3. The FDCPA is designed to protect consumers who have been  
9 victimized by unscrupulous debt collectors regardless of whether a  
10 valid debt exists. Baker v. G.C. Services Corp., 677 F.2d 775, 777 (9th  
11 Cir. 1982).
- 12 4. The FDCPA defines a "consumer" as any natural person obligated or  
13 allegedly obligated to pay any debt. FDCPA § 1692a(3).
- 14 5. The FDCPA defines "debt" as any obligation or alleged obligation of a  
15 consumer to pay money arising out of a transaction in which the  
16 money, property, insurance, or services which are the subject or the  
17 transaction are primarily for personal, family, or household purposes.  
18 FDCPA § 1692a(5).
- 19 6. The FDCPA defines "debt collector" as any person who uses any  
20 instrumentality of interstate commerce or the mails in any business  
21 the principal purpose of which is the collection of any debts, or who  
22 regularly collects or attempts to collect, directly or indirectly, debts  
23 owed or due or asserted to be owed or due to another. FDCPA §  
24 1692a(6).
- 25 7. Any debt collector who fails to comply with the provisions of the

1 FDCPA is liable for any actual damage sustained; statutory damages  
2 up to \$1,000; attorney's fees as determined by the Court and costs of  
3 the action. FDCPA § 1692k.

4 III. Jurisdiction

5 8. Jurisdiction of this Court, over this action and the parties herein,  
6 arises under 15 U.S.C. § 1692k(d) (FDCPA), and 28 U.S.C. §1337.  
7 Venue lies in the Phoenix Division of the District of Arizona as  
8 Plaintiff's claims arose from acts of the Defendant perpetrated therein.

9 IV. Parties

10 9. Plaintiff is an individual and resident of Maricopa County, Arizona.

11 10. Plaintiff is allegedly obligated to pay a consumer debt.

12 11. Plaintiff is a "consumer" as defined by FDCPA § 1692a(3).

13 12. Defendant Portfolio Recovery Associates, LLC is a limited liability  
14 company domiciled in the State of Delaware.

15 13. Portfolio regularly collects or attempts to collect debts owed or asserted  
16 to be owed or due another.

17 14. Portfolio regularly collects or attempts to collect debts which it has  
18 purchased after default.

19 15. Portfolio is a "debt collector" as defined by FDCPA § 1692a(6).

20 V. Factual Allegations

21 16. Sometime prior to March 2007, Portfolio allegedly acquired a debt from  
22 Citibank which Plaintiff owed.

23 17. Plaintiff opened the credit card account with Citibank in 1994.

24 18. Plaintiff used the Citibank account for personal, family or household  
25 purposes.

- 1 19. Plaintiff subsequently fell behind on his payments and ultimately  
2 defaulted on the Citibank debt in 1997.
- 3 20. Citibank charged off the alleged debt in January 1998.
- 4 21. In or about March 2007, Portfolio assigned the account to Jerold  
5 Kaplan Law Office, PC for collection.
- 6 22. On April 13, 2007, Portfolio filed suit against Plaintiff in the North  
7 Mesa Justice Court alleging that Plaintiff owed \$1,747.09, plus  
8 interest and attorney's fees.
- 9 23. Attached to the Justice Court Complaint was an affidavit dated March  
10 27, 2007 and signed by Lecinda Shipmon-Walker, an employee of  
11 Portfolio.
- 12 24. At the time Portfolio filed the Justice Court Complaint, the alleged  
13 debt was stale at over nine years old, and well beyond the applicable  
14 statute of limitations.
- 15 25. Plaintiff was served with the Justice Court complaint on April 22,  
16 2007.
- 17 26. On April 25, 2007 Portfolio through its attorneys mailed Plaintiff a  
18 letter and a proposed Stipulation and Order of Judgment.
- 19 27. The Stipulation and Order of Judgment provided that Plaintiff  
20 stipulate to a total judgment of \$3,776.07, which included \$1,532.21 for  
21 interest accrued at 10% through April 24, 2007.
- 22 28. Upon receipt of the complaint, immediately sought the assistance of an  
23 attorney.
- 24 29. Plaintiff was referred to attorney Mary Jo Clark by the Volunteer  
25 Lawyers Program in Maricopa County.

- 1 30. Plaintiff hire Ms. Clark to represent him regarding the Portfolio debt.
- 2 31. On April 26, 2007, Ms. Clark faxed a letter to Portfolio's attorney
- 3 stating that she represented Plaintiff in the matter.
- 4 32. On October 5, 2007, Portfolio filed for default judgment against
- 5 Plaintiff giving notice only to Ms. Clark.
- 6 33. Portfolio obtained a default judgment against Plaintiff on February 13,
- 7 2008.
- 8 34. Upon learning that Portfolio had obtained a judgment against him,
- 9 Plaintiff immediately hired new counsel to represent him in the
- 10 Justice Court action.
- 11 35. By stipulation, the default judgment was set aside by the Justice Court
- 12 on March 13, 2008.
- 13 36. As a result of Defendant's outrageous actions as outlined above,
- 14 Plaintiff has suffered damages including, but not limited to, costs and
- 15 attorney's fees expended in connection with the justice court action,
- 16 emotional distress, embarrassment, humiliation, headaches, upset
- 17 stomach, depression, sleeplessness, inability to concentrate, and other
- 18 severe emotional distress.
- 19 37. Defendant's actions taken here were intentional, willful, and in gross
- 20 or reckless disregard of Plaintiff's rights and part of its persistent and
- 21 routine practice of debt collection.
- 22 38. In the alternative, Defendant's actions were negligent.

23 VI. Causes of Action

24 a. Fair Debt Collection Practices Act

- 25 39. Plaintiff repeats, realleges, and incorporates by reference the foregoing

1 paragraphs.

2 40. Defendant's violations of the FDCPA include, but are not necessarily  
3 limited to, 15 U.S.C. §§ 1692e, 1692e(2)(A), 1692e(5), 1692e(10), 1692f,  
4 and 1692f(1).

5 41. As a direct result and proximate cause of Defendant's actions in  
6 violation of the FDCPA, Plaintiff has suffered actual damages.

7 VII. Demand for Jury Trial

8 Plaintiff hereby demands a jury trial on all issues so triable.

9 VIII. Prayer for Relief

10 WHEREFORE, Plaintiff requests that judgment be entered against  
11 Defendant for:

- 12 a) Statutory damages of \$1,000 pursuant to §1692k;  
13 b) Actual damages in an amount to be determined by trial;  
14 c) Costs and reasonable attorney's fees pursuant to §1692k; and  
15 d) Such other relief as may be just and proper.

16  
17 DATED March 26, 2008.

18  
19  
20 s/ Floyd W. Bybee  
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